

No. 15010

United States Court of Appeals
FOR THE NINTH CIRCUIT

CLIFFORD O. BOREN CONTRACTING
CO., INC., a California corporation;
CLIFFORD O. BOREN, President
CLIFFORD O. BOREN CONTRACTING
CO., INC., and DELTA M. BOREN,
Vice-President, CLIFFORD O. BOREN
CONTRACTING CO., INC.,

Appellants,

vs.

LLOYD M. TUCKER, Special Agent,
Internal Revenue Service,

Appellee.

On Appeal From the United States District Court for the
Southern District of California
Southern Division

PETITION OF APPELLANTS
FOR REHEARING EN BANC

FILED

DEC 31 1956

L. P. O'BRIEN, CLERK

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TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, LEMMON, BARNES, AND HAMLEY, CIRCUIT JUDGES:

Appellants, by and through their attorneys of record, hereby petition this Honorable Court to rehear the above entitled case, and upon rehearing to grant the relief prayed for.

On December 3, 1956, this Court affirmed the Order of the District Court holding Appellants in Contempt of Court. In affirming the Order holding Appellants in Contempt of Court, we respectfully submit, the Court fell into error.

The decision of this Court, it is respectfully submitted, is not in accord with the decision of this Court in *Hubner v. Tucker*,F.2d...., September 21, 1956. In the interests of uniformity of decision in this Court, it is respectfully urged that a rehearing *en banc* be granted.

GROUND FOR REHEARING

I

THE DECISION IS INCONSISTENT WITH PRIOR DECISIONS OF THIS COURT.

In *Hubner v. Tucker*,F.2d...., September 21, 1956, this Court declared the proper method to be followed by the Internal Revenue Service, and the District Court, in discovery proceedings involving third parties. [*Hubner v.*

Tucker, supra, Slip. Op. 4] The procedure there outlined was not followed in *Boren v. Tucker*, and it is respectfully urged that this Court's decision in *Boren v. Tucker* is not reconcilable with the prior holding in *Hubner v. Tucker*.

II

THE ORDER REQUIRING APPELLANTS TO SUBMIT ALL OF THE RECORDS FOR PHOTOSTATING WAS NOT SUPPORTED BY THE EVIDENCE.

This Court upheld the Order of the District Court that Appellee was entitled to photostat all of the summoned corporate books, records and payroll checks. The only evidence of the necessity of photostating the records related to the payroll checks. This Court discussed in connection with the right to photostat only the payroll checks. [Slip. Op. 6-7]

Appellants respectfully submit that this Court fell into error in not restricting the right to photostat to those records where a necessity of having exact copies was shown.

CONCLUSION

The Appellants urge this Court to reconsider its decision in light of the procedures prescribed in *Hubner v. Tucker*, and the apparent conflict of decision. The Appellants also urge this Court to reconsider the scope of the order relating to the right of Appellee to photostat the corporate records.

PRAYER

WHEREFORE, the Appellants pray that this Honorable Court grant the petition for rehearing *en banc* with reargument of the case if deemed advisable by the Court, and that it reverse the decision below.

Respectfully submitted,

John A. Brant
Attorney for Appellants

CERTIFICATION

It is hereby certified by the counsel for the Appellants in the above entitled case that this petition for rehearing is presented in good faith and in his judgment it is well founded because of the importance of the issues involved, and in no wise is it interposed for the purpose of delay.

John A. Brant
Counsel for Appellants.